

**REMARKS****CLAIMS 1, 2, AND 4-6 – 35 USC § 103 REJECTION – MIRASOL ‘436 IN VIEW OF HALE ‘243****Neither Mirasol Nor Hale Shows the Thin-Walled Recess As Defined in the Claim**

The Office Action concedes that Mirasol does not show a can wherein “the wall thickness of the lower peripheral portion of the body both immediately above and below the thin walled recess exceed[s] that of the thin walled recess”, as distinctly defined in the claim. However, the Office Action states that Hale’s drum does show this feature. This is incorrect. As seen in the Office Action figures themselves (which are taken from Figs. 4a and 4b in Hale), the wall thickness above what the Office Action interprets as a thin-walled recess (or *below* the recess if looking at the bottom of Hale’s drum) is composed of three layers – the outer drum wall, the inner liner, and the chime (22 or 24). In contrast, the wall thickness below what the Office Action interprets as a thin-walled recess (or *above* the recess if looking at the bottom of Hale’s drum) is composed of just two layers – the outer drum wall and the inner liner. These are the same two layers that the Office Action’s “thin-walled recess” is made of.

Thus the very most one could say is that in Hale, the wall thickness below the recess (or above the recess if looking at the bottom of the drum) is equal to the wall thickness of the recess. In fact, since Hale’s wall at the recess is canted (i.e., on a diagonal) after being crimped by Hale’s metal block 26, the thickness of Hale’s wall at that point measured horizontally is actually greater than the wall below it (or above it if looking at the bottom of the drum).

Moreover, Hale does not show the notch (i.e., what the Office Action interprets as a “thin-walled recess”) as being permanently deformed outward, as distinctly defined in the claims. It is not Hale’s notch that is permanently deformed outward. Instead, an entire section of Hale’s wall is deformed outward by metal block 26 – and because Hale’s wall is a layered wall, this deformation creates the notch that the Office Action interprets as a thin-walled recess.

Nonetheless, Applicant has amended Claim 1 to make the differences between his invention and those of Mirasol and Hale even clearer, by defining that the wall thickness of the lower peripheral portion of the body both immediately above and below the thin walled recess exceeds that of the thin walled recess prior to said deformation. This addition is well-supported in Applicant’s specification and drawings. Neither Mirasol nor Hale shows this feature, and thus amended claim 1 overcomes these references and the combination thereof.

#### **Hale Is Not Reasonably Pertinent to the Problem Being Solved in the Invention**

Contrary to what the Office Action states, Hale is not reasonably pertinent to the problem being solved. The base in the invention bears little resemblance to Hale’s deforming metal block 26, not only in physical structure but also, importantly, in its purpose and problem solved. Specifically, the deforming in Hale is done not at all to secure a base or cover to the drum. Instead, it is solely done to crimp together Hale’s multi-layered wall and hold the inner liner in place (see Hale, col. 3, lines 1-3). As seen in Hale’s Figures 4a and 4b, the notch created in Hale plays no role in sealing the top and bottom of his drum. In sum, Hale’s deformation is directed at

a totally different problem than the deformation in the invention. It is not appropriate to find some kind of deformation in a reference – however unrelated to the deformation occurring in the invention – and apply that to Mirasol.

#### **The Office Action's Stated Motivation for Modifying Mirasol Is Incorrect**

The Office Action cites an incorrect motivation for modifying Mirasol. See page 5 of the Action, wherein it states that a motivation for modifying Mirasol to the structure defined in the claims is to prevent the base from sliding out once attached to the bottom. This is incorrect. Mirasol does not lack means to prevent the base from sliding out once attached to the bottom - it already has such means, and these means are fully functional. Mirasol simply uses a different manner of preventing the base from sliding out, and there is no motivation to change this manner to the manner of the invention.

#### **The Office Action Improperly Combines Mirasol and Hale**

The Office Action takes Hale's metal block 26, interprets it as the protrusion of the claims, and then adds it to Mirasol. However, Hale's metal block is not a thermoplastic base member as distinctly defined in the claims. In fact, Hale's metal block 26, which does the deformation, does not even stay as part of his drum structure - instead, it is merely a tool to crimp Hale's multi-layered wall together and thereby hold the liner in place (see Hale, col. 3, lines 1-3). It is not appropriate to just take any protrusion that deforms the wall of a container and add that protrusion to Mirasol. Instead, any reference that is proposed to be combined with Mirasol must show a base member with a protrusion that permanently deforms a thin-walled recess in the can

body. Put another way, it is improper to carve out the “base member” part of the claim and attribute that part to Mirasol, and then obtain a protrusion from Hale that is not remotely part of a base member. Clearly, Claim 1 defines that the base member of the can has the protrusion that permanently deforms the thin-walled recess in the can body, where the can body above and below the thin-walled recess is thicker than the recess – and neither Mirasol nor Hale discloses this key claim element.

### **DEPENDENT CLAIMS**

Since independent Claim 1 defines patentably over the prior art for the reasons stated above, dependent Claims 2-11 also define patentably for the same reasons.

### **CONCLUSION**

For all of the above reasons, Applicant submits that the specification, drawings, and claims are in proper form, and that the claims all define patentably over the prior art. Therefore Applicant submits that this application is now in condition for allowance, which action they respectfully solicit.

Respectfully,

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